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U.S. DISTRICT COURT E.D.N.Y.

September 08, 2022

Delivery via U.S. Mail

★ SEP 13 2022 ★

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

BROOKLYN OFFICE

in re: United States v. Wilburn, no. 19-CR-108

Dear Chief Judge Brodie:

The defendant, Andre Wilburn, respectfully submits this letter to object to the "Ex parte Document" and letter filed on the public record. Docket Entry ("Dkt") 161. Because the defendant does not know the substance of the "Ex parte Document," its filing violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

The Due Process Clause provides that no person "shall be deprived of life [or] liberty [or] without due process of law." US Const. amend V. This has been interpreted to require adequate notice of the request for judicial relief and an opportunity for the defendant to be heard concerning the merits of such relief. An opportunity to be heard in a meaningful manner necessarily requires a hearing that "satisfies the constitutional minimum of fundamental fairness." *Santosky v. Kramer*, 455 US 745, 756 n.8 (1982). Furthermore, the defendant has asked CJA-appointed counsel, Samuel Gregory to send him Dkt 161 in its entirety, numerous times. See Exhibit A-Trulines Emails to Samuel Gregory. The defendant specifically objected to "ex parte meetings or events that solely involve the Court and the government." *Id.* at 2.

Because the defendant did not have an opportunity to contest the appropriateness of the letter, or even know the substance of its contents, his constitutional right to due process was deprived by "fatally infect[ing]" the outcome of the proceedings with the absence of fundamental fairness essential to the very concept of justice." *Lisbena v. California*, 314 US 219, 236 (1941); *Crane v. Kentucky*, 476 US 683, 690 (1986) ("[T]he Constitution guarantees criminal defendants a

meaningful opportunity to present a complete defense.").

It's worth noting that the recent ex parte document fails to protect the public's interest in an "efficient, fair, and effective justice system." *United States v. Ghailani*, 733 F. 3d 29 (2d Cir. 2013); *Kinsella v. United States*, 361 US 234 (1960) (Due process has to do with [the] denial of fundamental fairness, shocking to the universal sense of justice[.]"); American Bar Association Standards for Criminal Justice 2.9(A) ("A judge shall not initiate, permit, or consider ex parte communications[.]").

And finally, serious and blatant prosecutorial misconduct has distorted the integrity of the judicial process. *Jolly v. Coughlin*, 76 F. 3d 468, 482 (2d Cir. 1996) ([T]here is a "presumption of irreparable injury that flows from a violation of constitutional rights.")

For the foregoing reasons, the defendant respectfully objects to the so-called "Ex parte Document" and letter filed on August 29, 2022, Dkt 161.

Respectfully submitted,



Andre Wilburn # 73608-298

MDC Brooklyn

PO Box 329002

Brooklyn, NY 11232

Exhibit A

Trulines Emails to CJA-appointed counsel Samuel Gregory demonstrating the defendants numerous requests for the contents and substance of Docket Entry 161, Filed on August 29, 2022.

1. Email dated August 30, 2022
2. Email dated September 01, 2022
3. Email dated September 03, 2022
4. Email dated September 06, 2022
5. Email dated September 07, 2022

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

FROM: 73608298
TO: Gregory, Sam; W Ny, L
SUBJECT: Docket Entry 161
DATE: 08/30/2022 07:41:20 AM

Mr. Gregory:

What is this Ex Parte document on the docket sheet? Docket Entry 161.

Please let me know as soon as possible.

Thank you,
Andre Wilburn

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

FROM: 73608298
TO: Gregory, Sam; W Ny, L
SUBJECT: Restricted Ex Parte Document
DATE: 09/01/2022 08:28:47 PM

Mr. Gregory:

Please let me know what Docket Entry 161 is on the public record in its entirety. Unfortunately my mother, my legal advisor and assistant, does not have access to the document. She's met with an error message that says:

"The document is either restricted or can not be found."

when she attempts to access Docket Entry 161.

I do not agree with any ex parte meetings or events that solely involve the Court and the government. Thus, I am again asking you to explain what Document 161 consists of in its entirety and what it is about. As my advocate, counsel, and attorney, you have a duty to answer this question with candor.

Thank you,
Andre Wilburn

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

FROM: 73608298
TO: Gregory, Sam; W Ny, L
SUBJECT: Ex Parte Document #161
DATE: 09/03/2022 06:34:58 PM

Mr. Gregory:

Please let me know what Docket Entry #161 is on Chief Judge Brodie's docket. The entry is from August 29, 2022.

It's worth noting that you have not contacted me since August 28, 2022, despite me continuing to email you via TruLincs message.

Again, let me know what is contained in Docket Entry 161.

Thanks,
Andre Wilburn

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

FROM: 73608298

TO: Gregory, Sam; W Ny, L

SUBJECT: Docket 161 & Sentencing Mitigation

DATE: 09/06/2022 01:51:37 PM

Mr. Gregory:

I don't know if you're still alive because I have not heard from you in an email since August 27, 2022. Perhaps you're in Alaska with your boys from the hood working on your not-for-profit organization again.

But as a reminder, you have a duty to vigilantly represent me and answer my questions that are within the bounds of the law. With that said, I have two questions for you, which I've asked numerous times already:

- (1) What is the secret ex parte proceeding, Docket Entry 161, on Chief Judge Brodie's docket? Please send me this document in its entirety without redactions or any other omissions or secrets.
- (2) How are you, as my attorney, mitigating this upcoming sentencing?

And I also have another question for you pertaining to the sentencing:

- (1) When are you scheduling a pre-sentence investigation with a probation officer so that I could move forward with this sentencing?

It's worth noting that I do not agree with your strategy of sitting around in MDC Brooklyn for months under the guise of sentencing leniency and/or a lighter sentence if I take your poor advice.

Let me know what's going on. And please actually answer my unambiguous questions.

Best,
Andre Wilburn

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

FROM: 73608298
TO: Gregory, Sam; W Ny, L
SUBJECT: What is Ex Parte Document 161?
DATE: 09/07/2022 06:46:55 AM

Mr. Gregory:

Because my numerous requests have gone unanswered, I am now demanding that you disclose the substance of the Ex Parte communication, Docket Entry 161. Moreover, if you know or have access to the document in its entirety, then I am demanding that you or your cohort Luis Hernandez send me the full document, Docket Entry 161. Otherwise, I am going to write to the Court and inquire about this ex parte, secret, docket entry that you, as my attorney, refuse to disclose to me in my own case. And although you failed to protect and and enforce my due process rights in the past, ex parte letters, orders, or decrees are sharply limited by the Due Process Clause of the Fifth Amendment.

And once again, I am also asking you to assist me with my plea withdrawal.

But please send me Docket Entry 161 as soon as possible.

Thank you,
Andre Wilburn

Exhibit B

1. PACER public docket sheet for Docket Entry 161 as it appeared prior to September 07, 2022

2. PACER public docket sheet for Docket Entry 161 as it ~~is~~

appeared after September 07, 2022 - demonstrating CJA-appointed counsel, Samuel Gregory, filed the "Ex parte Document."

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

FROM: W Ny, L
TO: 73608298
SUBJECT: Update8
DATE: 08/29/2022 06:36:03 PM

Document 108

Document 161 Aug 29, 20221 - Exparte Document - to be used ~~ONLY~~ in conjunction with primary event selection AND Letter

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

FROM: W Ny, L
TO: 73608298
SUBJECT: Update 8
DATE: 09/07/2022 05:51:06 PM

U.S. District Court
Eastern District of New York (Brooklyn)
CRIMINAL DOCKET FOR CASE #: 1:19-cr-00108-MKB All Defendants
Case title: USA v. Wilburn
Date Filed: 02/28/2019
Magistrate judge case number: 1:18-mj-00837-VMS

08/04/2022 153

Letter Requesting Case Reassignment as to Andre Wilburn (Grubin, Andrew) (Entered: 08/04/2022)

08/10/2022 154. Letter Requesting Abeyance on Motion in Limine Deadline as to Andre Wilburn (Park, Gabriel) p (Entered: 08/10/2022)

08/12/2022 157 Letter dated August 7, 2022 to Judge Brodie from Andre Wilburn, objecting to and reporting the violation of rights pursuant to the Fifth Amendment Indictment and Six Amendment Clauses to the United States Constitution and Federal Rules of Criminal Procedure ("Fed R. Crim. P") 6,7, and 12(b)(3)(B). (Piper, Francine) (Entered: 08/16/2022)

08/15/2022 155 WAIVER OF INDICTMENT by Andre Wilburn (Piper, Francine) (Entered: 08/15/2022)

SUPERSEDING 156 INFORMATION as to Andre Wilburn (1) count(s) Iss. (Piper, Francine) (Entered: 08/15/2022)

08/16/2022 158 Letter dated August 11, 2022 to Judge Brodie from Andre Wilburn, regarding a deliberate indifference to medical care. (Piper, Francine) (Entered: 08/19/2022)

08/22/2022 159 Letter dated August 9, 2022 from Andre Wilburn to Judge Brodie, supplementing the letter dated August 7, 2022, reporting numerous indictment deficiencies with exhibits demonstrating the lack of a foreperson's signature. (Piper, Francine) (Entered: 08/22/2022)

08/26/2022 160 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Andre Wilburn held on January 26, 2022, before Judge Margo K. Brodie. Court Reporter/Transcriber David R Roy, Telephone number (718) 613-2609. Email address: drroyofcr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 9/16/2022. Redacted Transcript Deadline set for 9/26/2022. Release of Transcript Restriction set for 11/24/2022. (Roy, David) (Entered: 08/26/2022)

08/29/2022 161 Letter as to Andre Wilburn (Gregory, Samuel) (Entered: 08/29/2022)

METROPOLITAN DETENTION CENTER

80 29TH ST, BROOKLYN, NY 11232

The enclosed letter was processed through mail processing for forwarding to you.

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